

In the Matter of)
Connect America Fund) WC Docket No. 10-90

² Alexicon continues to have concerns about the Commission's decision to eliminate support in RoR LEC areas with 100% overlapping unsubsidized competition, and with the proposal to reduce support where unsubsidized competition covers less than 100% of a given RoR LEC areas. *See* Alexicon comments (filed 1/18/2012) at 6 and Alexicon reply comments (filed 2/17/2012) at 8 (WC Docket 10-90, et. al.)

I. BURDEN OF PROOF MUST BE PLACED ON THOSE WITH ACCESS TO EVIDENCE

Alexicon agrees with comments made by the Rural Associations in that the “onus of a robust and evidence-based affirmative showing”³ must be placed on alleged fixed wireline, as well as wireless, unsubsidized competitors. While the WCB recognizes the correct placement of the burden of proof in regards to fixed wireless broadband providers, it fails to do so for fixed wireline providers. Furthermore, reliance on the National Broadband Map (NBM) advocated by representatives of competitive broadband providers⁴ is misplaced in the context of the high cost, rural areas served by many RoR LECs. As has been pointed out on numerous occasions⁵, the NBM is not an accurate enough source upon which to base vital decisions such as completely removing support from an area served by a RoR LEC.

The reason for identifying unsubsidized competitors operating in RoR LEC areas is to implement the Commission’s decision to eliminate support in areas with 100% overlap.⁶ Thus, it must be proven that a competitor exists, that receives no federal universal service support, and which provides voice and broadband service that meets Commission-established criteria in the entire study area currently served by the RoR ILEC. In order to competently and sufficiently demonstrate the entirety of these requirements, the party with the best access to the evidence should be the one to present an affirmative case. Clearly, the party with the best access to the evidence is the company making the claim - the allegedly unsubsidized competitor who is offering voice and broadband service to 100% of the ILEC’s area. The ILEC does not and cannot reasonably be expected to have access to such evidence.⁷

The question then becomes what can be reasonably considered evidence of these criteria. The WCB has concluded, in the case of fixed wireline providers, that the NBM provides rebuttable proof that an unsubsidized carrier provides service in a given area.⁸ In these circumstances, it would be incumbent upon the LEC to challenge the presumption that an unsubsidized competitor provides voice and broadband services in 100% of the LEC’s study area. However, there are numerous problems with this approach, including the fact that the ILEC does not have access to information necessary to determine

³ Comments of NTCA, NECA, ERTA, WTA, WC Docket No. 10-90 (filed March 28, 2013), at 4

⁴ March 28, 2013 comments of The National Cable and Telecommunications Association at 5-6, and comments of The American Cable Association at 2

⁵ See e.g., Rural Association comments (February 19, 2013) at 2-8

⁶ *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, et al (rel. November 18, 2011) (*ICC/USF Transformation Order*) at 280-284

⁷ At the same time, it must be noted that the ILEC is under no obligation, in the context of the 100% overlap rule, to demonstrate that it is providing ubiquitous broadband and voice service. That fact has been established elsewhere and previously; e.g., in the various state and federal ETC rules and associated reporting.

⁸ *Public Notice* at 2

where the competitor provides service, and that the NBM, besides being notoriously inaccurate, will not demonstrate service is provided in 100% of the LEC's study area.⁹

II. AN AFFIRMATIVE CASE SHOULD BE MADE BY ALL CARRIERS ALLEGING THE PROVISION OF 100% OVERLAPPING VOICE AND BROADBAND SERVICE

The WCB seems intent upon, at least in the context of CAF Phase II, a quick and easy approach to determining the existence of 100% overlap by unsubsidized competition. As stated above, however, this process needs to be implemented properly now so that it may be best implemented later with rate of return carriers. There is potentially a substantial amount of universal service support at stake in this process, and to adopt a quick, easy, "check the map" approach here most likely will spell disaster in the future as the 100% overlap rule is implemented in RoR areas. Thus, Alexicon agrees with the Rural Associations that "a meaningful and evidence-based process must be applied at each turn - without short-cuts..."¹⁰, which includes state commission involvement, in order to find that 100% overlapping voice and broadband service is being provided by an unsubsidized competitor in a given incumbent LEC's study area.

A natural part of any evidence-based process designed to determine whether an unsubsidized competitor is serving 100% of a given geographical area is to ascertain not only the ability of the competitor to serve, but also its willingness and commitment to do so. Absent any other mechanism designed to determine whether an unsubsidized competitor is indeed offering, or is willing to offer, service to all who request such service¹¹, the WCB must ensure the potential removal of support from an area is accompanied by a commitment to serve. Discussion of this dilemma is absent from this proceeding, and this oversight needs to be remedied. Therefore, the WCB and Commission must, during the evidence-based process discussed herein, (1) obtain certification from the unsubsidized competitor that it is willing to serve the entire area in question, and (2) implement an enforcement mechanism to ensure customers who request service from the unsubsidized competitor receive such service within a reasonable time frame.

⁹ The NBM only alleges to show that broadband service is provided in part of a given geographic location, such as a census block, and not the entirety of that area, and only reflects broadband service providers (not voice). Nor does the NBM indicate that other public interest obligations related to broadband service, such as latency and capacity criteria, are being met.

¹⁰ Rural Association Comments at 2-3

¹¹ For example, 47 CFR 54.313(a)(3) requires Eligible Telecommunications Carriers (ETCs) to report the number of requests for service from potential customers within the recipient's service area what were unfulfilled. As such, this rule serves as a "check" on claims made by ETCs. However, since the above discussion relates to unsubsidized competitors, it is assumed and likely that these firms are not ETCs and thus would not be subject to this rule.

Any process adopted by the Commission to determine the existence of overlapping service being provided by an unsubsidized competitor in a LEC's area must be technologically neutral. One class of potential competitors, such as fixed wireless providers, cannot be singled out for one process while another class, such as cable voice/broadband providers, are allowed to point at a map and must be proven wrong by the incumbent. Thus, the robust data-driven process being advocated by the Rural Associations, and which is being supported in these comments, must apply to call potential carriers in all situations.

CONCLUSION

While Alexicon recognizes the progress the WCB made in establishing a more data-driven process for determining where unsubsidized competition covers 100% of a given geographic area, not enough progress was made. It will be vital that the process adopted be right the first time, as it will impact more than just carriers hoping to receive a portion of the CAF Phase II support - it will also eventually impact rural RoR-regulated LECs. To this end, the WCB and Commission must adopt a robust, evidence-driven process that includes an affirmative showing by any allegedly unsubsidized competitor that serves 100% of a given geographical areas, and which does not rely solely or even heavily on the National Broadband Map.

Respectfully Submitted,

Alexicon Telecommunications Consulting
3210 E. Woodmen Road, Suite 210
Colorado Springs, Colorado 80920

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